IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 650 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

KHODAJI NATHAJI KANGARIA

Appearance:

1. Special Civil Application No. 650 of 1999

MR HARDIK C RAWAL for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 09/05/2005

ORAL JUDGEMENT

#. Gujarat State Road Transport Corporation [hereinafter referred to as "GSRTC"] is before this Court being aggrieved by judgment and award dated 9th July, 1998

passed by the Special Labour Court, Ahmedabad, in Reference (L.C.I.D.A.T.) No. 118 of 1997, whereby the learned Labour Judge was pleased to allow the Reference and order reinstatement of the workman on the original post with full backwages with effect from 10.5.1993 with consequential benefits and continuity of service. The learned Judge was also pleased to order payment of Rs.1500/- towards the cost of the Reference.

#. It is the case of the petitioner-GSRTC that the respondent-workman was only an `Off-Day Reliever Watchman' and as the name suggests, only when the regular Watchman was not available, the respondent-workman was given the work. It is also the case of the petitioner that the respondent-workman was appointed without undertaking any selection process. As per the rules of the establishment, the respondent-workman was appointed as `Reliever Watchman' for two months and on completion of the said period, his services were brought to an end; he was never appointed as permanent Watchman. It was only as per the requirement the respondent-workman was asked to render his services and in the month of May, 1993, when there was no requirement, his services were terminated.

#. As against this, the learned advocate for the respondent submitted that the respondent-workman was serving for last 15 years at Bareja Depot of Ahmedabad Division. The Manager of Bareja Depot terminated his services by a written order dated 11.5.1993, stating that as now Shri Kantibhai M. Prajapati has reported for duty, services of the respondent are terminated. His case is that the establishment did not comply with the provisions of the Industrial Disputes Act, 1947 and did not pay notice pay, retrenchment compensation etc; that the establishment has continued junior persons in service, hence, order passed by the establishment is unreasonable, illegal and unjust and therefore, the same be quashed and set aside and he be reinstated in service with continuity of service with full backwages.

#. The petition was filed on 27th January, 1999. On 29th January, 1999, this Court was pleased to issue notice returnable on 16th February, 1999 and in the meantime, the award was stayed qua `backwages only'. Thereafter, on 14.10.1999, this Court issued Rule and continued the order passed earlier.

#. Learned advocate Mr. Rathod, appearing with the petitioner informs the Court that the petitioner-GSRTC has complied with the award of reinstatement and

respondent-workman is in service as on date. He submitted that (therefore, controversy will now survive qua backwages only) unless the petitioner is able to successfully assail the order of reinstatement question of backwages only, survives. He submitted that respondent workman is ready to leave the question of grant of backwages to the discretion of the Court.

#. Learned advocate for the petitioner-GSRTC submitted that the respondent-workman was appointed only as Off Day Reliever Watchman and that too only for two months and at the end of the period, when there was no requirement, his services were terminated.

#. Learned advocate for the respondent invited the attention of the Court to the relevant part of the judgment and award wherein the learned Labour Judge has considered the deposition of the witnesses examined by the petitioner-GSRTC. He also invited the attention of the Court to the fact that between May, 1992 to April, 1993, the respondent-workman had worked for 260 days and had thus put in one year's continuous service, entitling him to protection under Section 25-F and C of the I.D.Act. He also submitted that the learned Labour Judge on consideration of various decisions of this Court and also of other High Courts and on taking into consideration all the relevant aspects, has passed the order of reinstatement on the original post with continuity of service with full backwages.

#. He submitted that it is a well settled legal position that if the respondent-workman was not engaged in gainful employment and if the order of termination is held to be illegal, he is entitled to the full backwages. He reiterated that he has instructions from the workman to leave the matter of backwages to the Hon'ble Court as a goodwill gesture on his part as the petitioner-GSRTC has already reinstated him in service.

#. Learned advocate for the petitioner-GSRTC is not able to dislodge the findings recorded by the learned Labour Judge holding that the petitioner-Corporation has committed breach of the relevant provisions of the Industrial Disputes Act, 1947 and therefore, the order of termination is unjust, arbitrary and illegal and therefore, the same is required to be quashed and set aside. The learned advocate for the petitioner, in the alternative, submitted that the petitioner being a public body, the grant of backwages may be considered sympathetically. In view of the fact that award qua reinstatement is not successfully assailed, is not

interfered by this Court.

##. Taking into consideration the rival submissions of both the parties, it is deemed fit that the award of the learned Labour Judge qua backwages be modified by reducing it to 50%. The petition is allowed to the aforesaid extent only. Rule is made absolute to the aforesaid extent only with no order as to costs.

[RAVI R. TRIPATHI, J.]
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